UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FACETIME COMMUNICATIONS, INC., Plaintiff, - against- REUTERS LIMITED, Defendant.	**ECF FILED** No. 08 Civ. 4730 (CM)(KNF)

DECLARATION OF ERAN BARAK

I, ERAN BARAK, hereby declare:

1.   I am the Global Head of Strategy, Collaboration Services at Thomson Reuters. I have more than 20 years of experience working in the software development field. Except as indicated below, I have personal knowledge of the matters stated in this declaration.

Reuters Messaging & the Deployed Compliance Solution

2.   Beginning in 2002, Reuters began offering an instant messaging service called "Reuters Messaging" ("RM"), which is offered to Reuters' customers in the financial market. RM allows users to, among other things, communicate with other users of the Reuters Messaging service, and starting November 2005, also to public instant messaging networks (such as AOL Instant Messenger, MSN Messenger and Yahoo Messenger).

3.   Financial institutions have instituted compliance programs designed to comply with federal, state and local laws. All compliance programs require financial institutions to keep records of electronic communications, including instant messaging systems.

4.   Prior to 2005 Reuters did not offer its RM customers a compliance solution in connection with RM. Instead Reuters enabled RM compatibility with compliance products offered by certified third-party vendors. FaceTime was one of the certified third-party vendors that provided an RM compatible compliance solution to customers of Reuters Messaging.

5.   The certified third-party program did not successfully support Reuters' business mainly because partners' solutions lacked key features required by Reuters customers. To remedy this gap, Reuters decided to launch its own RM-compatible compliance solution to the market, by leveraging an existing product and enhancing & customizing it to meet Reuters customers' needs.

6.   On September 29, 2004 Reuters entered into a letter agreement with FaceTime, entitled the Product Customization and Licensing Agreement, pursuant to which FaceTime agreed to customize its source code in order to meet Reuters Messaging customers' needs. The 2004 Agreement refers to the RM compatible enhanced FaceTime software product as the "Customized Product." Under the license of this agreement, Reuters intended to sell the Customized Product under its own brand.

7.   Like the FaceTime original product, the Customized Product was offered as a "Deployed Solution" to RM customers. A Deployed Solution meant Reuters' customers would install the Customized Product on site at their own respective locations. The customers would then use the software to monitor their employees' instant messages and comply with rules and regulations relating to electronic communications.

The Source Code Agreement and the Hosted Compliance Solution

8.   In or around the fall of 2005, Reuters decided to replace the Deployed Solution with a product that Reuters itself would host and offer directly to its customers as part of Reuters Messaging service (the "Hosted Solution").

9.   In order to build the Hosted Solution, Reuters chose to pursue an agreement with FaceTime to purchase FaceTime's source code.

10.   I was the primary contact in the negotiations with FaceTime in connection with this agreement.

11.   During the negotiations, on behalf of Reuters, I chose to pursue an arrangement under which we would purchase FaceTime's source code rather than undertake a royalty/partnership arrangement with FaceTime. On or around January 27, 2006, FaceTime presented me with a term sheet in which the consideration to acquire a perpetual license to FaceTime's source code was payable in eight quarterly payments of $250,000 each, over the course of two years, along with a final perpetual license payment in the amount of $50,000. (The original term sheet, reflecting a royalty structure, and the revised term sheet, are attached as Exhibits A and B, respectively.)

12.   We agreed to this structure, as it reflected Reuters' desire to use the FaceTime source code to create the Hosted Solution and thereafter be free to support and update the Hosted Solution without the requirement of entering a partnership or royalty arrangement with FaceTime. Reuters preferred multiple payments to a single upfront payment since it was better for our budgeted cash flow.

13.   During the negotiations to decide on the payment structure, there was no specific discussion regarding an option. Rather, the negotiations centered on whether the overall

structure would be royalty-based or a purchase arrangement. That it was called an option, rather than a final installment payment, was not material to Reuters because our intent had always been to purchase a perpetual license. The final payment was quite small relative to Reuters overall investment in the project. It would have made no business sense whatsoever for Reuters not to pay it. It was our view that the purpose of the Agreement was to purchase a perpetual license to use FaceTime's source code to build the Hosted Solution which we would own. The deal was presented to senior management for approval based on its total cost, including all payments (specifically including the perpetual license payment).

14.   After the purchase structure fee arrangement was agreed to, the only negotiations involving the payment terms centered on the actual payment amounts[1]. These negotiations were centered on the details of the various payments; FaceTime wanted more upfront, while Reuters preferred to spread the payments more evenly over the initial two year term of the Agreement. We considered the perpetual license payment to be the final payment due under the Agreement. That it was in the form of an option was not material because our intent had always been to purchase a perpetual license.

15.   In fact, I recall discussing with FaceTime's representatives that we were purchasing a perpetual right to use FaceTime's source code and that we fully intended to exercise the final payment in the Agreement.

16.   It was my understanding that Reuters was purchasing the perpetual right to use FaceTime's source code to, among other things, build and support Reuters' own Hosted

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[1] The Term Sheet reflecting this payment structure was signed by both parties on January 31, 2006. The actual payment amounts agreed to in the Term Sheet were substantially similar to those included in the FaceTime January 27th draft mentioned above, with the only differences being that five of the eight quarterly payments were for $200,000 each, three of the eight quarterly payments were for $100,000 each, and the final payment was for $150,000.

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Solution. This understanding was clearly and consistently expressed both internally and in numerous communications with FaceTime.

17. At no time during the negotiation of the Agreement or since did I, or to my knowledge, any member of Reuters, ever express to FaceTime that Reuters did not intend to make all of the payments under the Agreement and complete the purchase of the perpetual license. Similarly, until February 13, 2008, no member of FaceTime had ever expressed to me any doubt as to whether Reuters intended to fulfill its obligations under the Agreement and complete the purchase of the perpetual license.

18. During negotiations, our discussions regarding the timing of payments focused solely on making a reasonable schedule by which Reuters' purchase of the license could be effectively financed. While it was of course always our aspiration to make payments on time, there was never any suggestion by FaceTime that meeting the deadlines precisely was an important consideration for them. In particular, FaceTime's representatives never said anything during negotiations that suggested that making of the final $150,000 payment by January 31, 2008 was a critical part of the bargain or that an inadvertent delay of two weeks would be material to them.

19. Thomson Reuters has, in total, paid approximately $1,450,000 to FaceTime for the Code, less the amount FaceTime has returned of $65,453.50.

20. In addition, Thomson Reuters has invested at least $2 million in development costs (representing the time spent by Reuters personnel plus additional capital expenditures) in connection with modifying and enhancing the FaceTime source code to create the Hosted Solution, which could be hosted on Thomson Reuters' own servers, rather than deployed at customers' premises.

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21.   Customized in this fashion, the Reuters Messaging compliance product constitutes a critical resource for no fewer than 100 of Reuters' customers who use the Reuters Messaging Service.

22.   I have reviewed the Agreement in connection with the preparation of this declaration. I note that Section 2.7 of the Agreement specifically provides that "[e]xcept to the extent of FaceTime's rights in the Licensed Material, FaceTime shall have no right, title, or interest in any intellectual property of whatever nature in the Derivative Works." That same section of the Agreement goes on to state that "FaceTime acknowledges and agrees that Reuters owns all right, title, and interest in and to Reuters Messaging System." Nonetheless, I can only infer that FaceTime believes that, by returning a portion of Thomson Reuters's final payment under the Agreement, it can fabricate an argument that Thomson Reuters is not entitled to use some undefined portion of the system that it has built for the benefit of its customers at a tremendous expenditure of time and money.

23.   Even the improper threat of such a disruption causes Thomson Reuters – and its over 100 customers -- irreparable harm because, as previously stated, those customers rely on the Reuters Messaging service to be in compliance with federal, state, and local laws requiring maintenance of records of electronic communications, including their instant messages.

24.   If Thomson Reuters were suddenly unable to make use of the Reuters Messaging compliance product, Thomson Reuters' customers would be crippled in their day-to-day business operations. Specifically customers in regulated countries (such as the US) would need to immediately cease all use of Reuters Messaging and seek the purchase and deployment of an alternative instant messaging solution. Moreover, if that were to happen, such customers may further cancel other (non RM) product subscriptions with Thomson Reuters. Even the

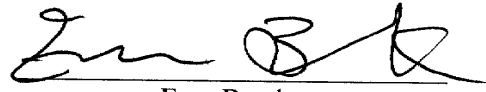739721_2   6

improper threat by FaceTime to cause such a disruption would have a devastating impact on customer satisfaction and customer goodwill. Indeed, while Thomson Reuters has strived successfully for years to develop high levels of customer satisfaction, and has earned a reputation for meeting customer expectations (thanks in part to its effective compliance system), the disruption threatened by FaceTime would cause incalculable damage to Thomson Reuters' customer relationships and its positive reputation. In addition to this loss of goodwill, moreover, based on our current and reasonably foreseeable customer base, the potential revenue impact could be severe, perhaps in the several millions of dollars for 2009 alone.

25.   There is no practical immediate substitute for the Reuters Messaging compliance product in the event of any disruption. Any development of a suitable replacement (and complete transition of existing customers to the new product) would take several months (and would involve tremendous expenditure of money and labor) for Thomson Reuters to convert to an alternative product. The increased cost alone of forcing Reuters into a highly rapid transition to alternatives (versus a more ratable, planned transition) could be a million dollars or perhaps more.

26.   Frankly, as I read the Agreement, I believe that Thomson Reuters has the right to continue to use its customized messaging system even if the Agreement were terminated. As stated above, FaceTime acknowledged in the Agreement that Thomson Reuters owns the Derivative Works and the Reuters Messaging service. Furthermore, Section 6.2 of the Agreement provides that, even if the FaceTime license to the Code were terminated, it "shall not affect Reuters' right, title or interest in any intellectual property of whatever nature in the Derivative Works exclusive of the Licensed Materials." However, FaceTime's submissions suggest that it purports to hold a different understanding of Thomson Reuters' rights.

27.   In stark contrast to the forfeiture that Thomson Reuters could suffer, there was, upon information and belief, absolutely no prejudice to FaceTime in receiving the final payment under the Agreement on February 15, 2008, instead of January 31, 2008. The very brief delay could not have cost FaceTime any money or caused it to lose any opportunity. FaceTime's license of the Code to Thomson Reuters is non-exclusive (see Section 2.3 of the Agreement) and consequently FaceTime was at all times – before and after January 31, 2008 – free to license the same Code to as many customers as it desired. Whether Thomson Reuters made the final payment on January 31, 2008, or on February 15, 2008, in no way interfered or threatened to interfere with FaceTime's full exercise of its rights in its intellectual property.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I executed this declaration in Israel on July 1, 2008.

Eran Barak

Exhibit A

FaceTime

January 2<u>7</u>, 2006

Mr. David Gurle
EVP, Collaboration Services
Reuters America Inc.
The Reuters Building
3 Times Square
New York, NY 10036

RE: FaceTime Reuters Messaging Term Sheet – IMAuditor Licensing

Partner: Reuters America LLC ("Reuters") or ("Partner")

Products: 1) FaceTime will license its current version IMAuditor software ("Software") to Reuters
                          to be offered by Reuters or its designees in a hosted managed service format and an on-
                          premise deployment for users in all industries for the Reuters Messaging network only
                          (the "Service"). Reuters will also license the source code to IMAuditor and receive
                          training and developer support so that it can develop custom modules such as image
                          capture, voice and video functionality, for IMAuditor for the Reuters network only (the
                          "Custom Modules").

                          The licensed version of IMAuditor will include all current feature set and later releases
                          will add:
                          a)   Support for RMChat , as detailed in the FaceTime RMChat product specification
                          b)   Support for multi-tenancy to enable easy hosting
                          c)   Support for RM Forms
                          (Collectively with the current features, the "Baseline Functionality")

                          2) FaceTime will license to Reuters the source c ode and application programming
                          interfaces of IMAuditor as necessary to develop Custom Modules subject to the
                          following restrictions ("IMA Source Code"):

                          a)   Custom Modules will provide compliance and security solutions to end users of
                               the Reuters Messaging network only , provided however, Reuters and FaceTime
                               agree to negotiate in good faith terms under which Reuters will be allowed in its
                               data center to use the Software and Custom Modules in conjunction with other
                               networks for the sole purpose of managing incoming communication from non-
                               Reuters customers (i.e. coming from other networks) to the Reuters Messaging
                               network for hygiene policy enforcement purposes.
                          b)   <u>The Custom Modules shall not duplicate or compete with any part of the
                               Baseline Functionality</u>
                          c)   <u>Any licensee of a Custom Module must first, or in conjunction with such
                               license, license IMAuditor on the terms provided herein</u>
                          d)   Reuters shall use the current version of the IMA Source Code as provided and as
                               periodically updated by FaceTime
                          e)   Reuters will not transfer the IMA Source Code to other parties , excluding
                               Reuters subcontractors provided such subcontractors are bound by the same
                               terms or use defined herein
                          f)   Reuters will ensure that protection of the IMA Source Code and FaceTime's
                               confidential information that are no less rigorous than Reuters has for its own
                               intellectual property
                          g)   Source Code may not be used for any purpose other than creation of the Custom
                               Modules

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FaceTime

3) FaceTime will license to Reuters the source code of Reuters Messaging Compliance Manager ("RMCM Source Code") as developed under the parties' existing Product Customization and Licensing Agreement (the "RMCM Agreement").

a) The RMCM Source Code license will be subject to the same conditions as for the IMA Source Code.
b) FaceTime and Reuters agree to terminate the RMCM Agreement upon the date of the launch of the Service (the "Launch") and that as of such date any existing licenses of Reuters Messaging Compliance Manager shall be subject to the Wind Down and Survival Periods as defined in the RMCM Agreement.

4) The IMA Source Code and the RMCM Source Code (together, the "Source Code") will be accomanied by any build plans (such as unit test, integration, test plans), build tools and any other document or tool in existence and used by FaceTime to develop its products using the Source Code (provided that Reuters shall be responsible for payment of any applicable license fees due to a third-party therefore)..

Schedule: FaceTime and Reuters agree to use reasonable efforts to adhere to the following schedule:

a)   The parties will sign this term sheet and Reuters will issue a Purchase Order ("PO") for the IMAuditor software license by January 31st, 2006.
b)   FaceTime shall deliver to Reuters access to the Software by January 31st, 2006.
c)   Reuters and FaceTime will complete the IMAuditor Software license. agreement (together with this term sheet, the "Agreement"), including terms for Reuters to gain access to IMAuditor Source Code by February 28th, 2006.
d)   FaceTime will deliver IMAuditor "GA" software to Reuters no later than April 30, 2006 which includes the Baseline Functionality.

Term: The initial term (the "Initial Term") of the Agreement will have two periods.

a)   Period One ("Period One") will run from the date of this letter to July 31st 2007, 18 months. Period One will be extended day for day if FaceTime is responsible for causing a delay of the GA delivery date of IMAuditor with the Baseline Functionality beyond April 30th, 2006.
b)   Period Two ("Period Two") will be 12 months long and commence the day after Period One ends.
c)   Thereafter, the Agreement shall automatically renew for additional one (1) year periods unless one of the parties cancels by notifying the other party no later than 30 days before the renewal date.
d)   The Agreement shall provide for a Wind Down Period and a Survival Period comparable to those agreed by Reuters and FaceTime under the RMCM Agreement and that such Wind Down Period and Survival Period shall survive any termination of the Agreement by reason of assignment by, or bankruptcy of, FaceTime.

**Economics
And Payment Terms:**   1) **IMAuditor License:** for Reuters to deploy as a hosted service and on premise solution on the following terms:

a) $150,000 flat license fee (the "IMAuditor License Fee") for an unlimited number of users of the Service in Period One. The one-time license fee for Period One will be non refundable and paid 60 days after the issuance of a PO

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from Reuters on January 31, 2006 and will constitute full payment of license fees to FaceTime during Period One only .

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b) $100,000 license fee for up to 10,000 Service users during Period Two. Users during Period Two shall include users continuing use of the Service from Period One and all users beginning use of the Service during Period Two. The upfront license fee for Period Two will be non refundable (other than as a result of breach by FaceTime) and will be payable 60 days after Period Two commences.

c) If Reuters deploys more than 10,000 users of the Service at any time during Period Two, it will pay FaceTime a per user per year fee on the following Schedule:
   a. 10,001 – 20,000 users - $11.00 per user per year
   b. 20,001- 30,000 users - $10.00 per user per year
   c. 30,001- 40,000 users - $9.00 per user per year
   d. 40,001- 50,000 users - $8.00 per user per year
   e. 50,001+ - $7.00 per user per year

d) Annual per user per year fees will be due 60 days after Service users above 10,000 users are deployed.

e) For renewal years following Period Two, the economic terms will be the same as in Period Two, except that the parties agree to negotiate in good faith the Custom Module royalty fees for such renewal years.

2) **Source Code License**

a) In Period One of the Agreement Reuters will pay FaceTime $100,000 for the Source Code license (the "Source Code License Fee") and ongoing developer support (on the same terms as negotiated in the Reuters Messaging Compliance Manager OEM agreement).

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b) In Period One of the Agreement Reuters will additionally pay to FaceTime a one-time royalty of $100,000 as full payment for all licenses of Custom Modules (the "Custom Module Royalty Fee") during Period One.

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c) The Source Code license will include 5 days of Source Code training. Additional source code training can be negotiated on a daily rate, as needed.

d) In Period Two Reuters will Pay FaceTime $100,000 for the Source Code license.

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e) In Period Two of the Agreement, Reuters will additionally pay to FaceTime a one-time royalty of $150,000 for all licenses of Custom Modules during Period Two.

f) FaceTime will have no IPR rights in any development made by Reuters for or based on the Service.

g) For renewal years following Period Two, the economic terms will be the same as in Period Two.

3) **Purchase Order:** By January 31st 2006 Reuters will issue, two Purchase Orders to FaceTime. The first P.O. shall be for $150,000, detailing: 1) the IMAuditor Licensee Fee and 2) the terms of the license, and the non-refundability of those fees. The second P.O. shall be for $200,000, detailing 1) the Source Code License Fee and 2) the Custom Module License Fee for Period One, the terms of the license, and the non-refundability of that fee. The Period Two Source Code license fee and the Period Two Custom Module royalty fee, shall be paid Reuters sixty (60) days after the beginning of Period Two.

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Sales Training: FaceTime will provide initial sales training to the Reuters sales and system engineering organizations and renew such training each time there is a new major release of the IMAuditor product. Training sessions may be done via conference call and Web Conferencing

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       session or on-site as mutually agreed. As determined by the number of attendees, training may be a single session, multiple sessions or performed on an as-needed basis.

Customer Support Training: FaceTime will provide technical customer support training to Reuters' customer support organization prior to launch and each time there is a new major release of the IMAuditor product.

IMAuditor Customer Support: Reuters will be responsible for Level I and Level II technical support with FaceTime responsible for Level III support. During the initial 90-120 days following the Launch, FaceTime will work closely with Reuters to provide "overlay support" as needed as the Reuters Level I and II technical support representative become accustomed to IMAuditor.

Reporting: Reuters will provide reporting (e.g. (i) the unique client ID of each customer to whom Reuters and its third party resellers have licensed the Service; (ii) the total number of authorized users under each such End User License Agreement (EULA); and (iii) Custom Module name; and iv) and such additional data or information reasonably necessary to verify the calculation of the amount of fees set forth in each such report. All customer information will be deemed confidential.

Partner Management: Relationship Manager– both partners will provide a single point of contact to Partner. The Relationship Manager will coordinate all business and technical issues.

Thank you very much, we look forward to working with you.

Sincerely,

Christopher S. Dean
Senior Vice President of Business Development
FaceTime Communication
1159 Triton Drive
Foster City, CA 94404
(650) 572-5882

AGREED:

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David Gurlé   Date
Executive Vice President
Reuters Collaboration Services

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Exhibit B

FaceTime

January 27, 2006

Mr. David Gurle
EVP, Collaboration Services
Reuters America Inc.
The Reuters Building
3 Times Square
New York, NY 10036

RE: FaceTime Reuters Messaging Term Sheet – IMAuditor Source Code Licensing

Partner:	Reuters America LLC ("Reuters") or ("Partner")

Products: **1)** FaceTime will provide Reuters with a license to the source code of: A) the current version of its IMAuditor software (the "IMA Source Code"), B) the source code of Reuters Messaging Compliance Manager (the "RMCM Source Code") as developed under the parties' existing Product Customization and Licensing Agreement and C) the source code of additional functionality to be added to the IMAuditor software by FaceTime (the "Additional Functionality Source Code"), which functionality shall consist of: (i) support for RMChat, as detailed in the FaceTime RMChat product specification, (ii) support for multi-tenancy to enable easy hosting, and (iii) support for RM Forms (all licensed source code, collectively the "Source Code") for use by Reuters or its designees in the creation of a hosted managed service format and an on-premise software deployment for users in all industries, but strictly limited to use on the Reuters Messaging network only (the "Authorized Use"). The license will be subject to the following terms:

a) Reuters shall be permitted to use the Source Code to produce for distribution a derivative work which will provide compliance and security solutions to end users of the Reuters Messaging network only, provided however, Reuters and FaceTime agree to negotiate in good faith terms under which Reuters will be allowed in its data center to use the Software and Custom Modules in conjunction with other networks for the sole purpose of managing incoming communication from non-Reuters customers (i.e. coming from other networks) to the Reuters Messaging network for hygiene policy enforcement purposes.

b) Reuters shall have no right to sublicense or transfer the Source Code to other parties, excluding Reuters subcontractors provided such subcontractors are bound by the same terms or use defined herein.

c) Reuters will ensure that protection of the Source Code and FaceTime's confidential information that are no less rigorous than Reuters has for its own intellectual property.

d) The Source Code license will include 10 days of Source Code training. Additional source code training can be negotiated on a daily rate, as needed.

e) FaceTime shall have no right in any intellectual property of Reuters developed in connection with the Authorized Use.

f) The Source Code may not be used for any purpose other than the Authorized Use.

g) FaceTime shall retain all rights to market and license products using the Source Code in all regards, including marketing and licensing to customers using the Reuters Messaging network.

2) The Source Code will be accompanied by any build plans (such as unit test, integration, test plans), build tools and any other document or tool in existence and used by FaceTime to develop its products using the Source Code (provided that Reuters shall be responsible for the licensing of any third-party tool or product and the payment of any applicable license fees due therefore).

FaceTime

Schedule:	FaceTime and Reuters agree to use reasonable efforts to adhere to the following schedule:

a) The parties will sign this term sheet by January 31st, 2006.
b) On January 31st, 2006 FaceTime will deliver the object code form of IMAuditor to Reuters so that Reuters' staff may begin familiarizing themselves with the application.
c) Reuters and FaceTime will complete the Source Code license agreement (together with this term sheet, the "Agreement") and deliver the IMA Source Code and RMCM Source Code by February 28th, 2006.
d) FaceTime will deliver the Additional Functionality Source Code to Reuters no later than April 30th, 2006.

Term: The term of the Agreement shall begin on January 31, 2006. The Source Code license shall be a two year term license, with payment structured as a two year capital lease and an option by Reuters to acquire a perpetual license at the close of the lease term.

Economics and Payment Terms:

1) As payment for the Source Code license, Reuters shall pay FaceTime eight equal lease payments totaling Two Million Dollars ($2,000,000). Lease payments shall be due quarterly as follows:

January 31, 2006	$250,000
April 30, 2006	$250,000
July 31, 2006	$250,000
October 31, 2006	$250,000
January 31, 2007	$250,000
April 30, 2007	$250,000
July 31, 2007	$250,000
October 31, 2007	$250,000

2) Reuters shall have the irrevocable option to acquire a perpetual license to the Source Code upon payment of $50,000 at the close of the lease term.

3) Reuters shall, during the term of the license irrevocably waive all fees, including but not limited to, certified access fees, which would otherwise be assessed by Reuters against FaceTime or the user of a FaceTime product for its use in connection with a Reuters product or service.

Training and Customer Support : At Reuters request, FaceTime will negotiate in good faith toward an agreement to provide Reuters training on the Source Code and the ability to provide customer support of the Authorized Use.

Partner Management: Relationship Manager – both partners will provide a single point of contact to Partner. The Relationship Manager will coordinate all business and technical issues.

Binding Agreement: FaceTime and Reuters intend this term sheet to be a binding agreement upon execution by both parties.

Thank you very much, we look forward to working with you.

Sincerely,

FaceTime

Christopher S. Dean
Senior Vice President of Business Development
FaceTime Communication
1159 Triton Drive
Foster City, CA 94404
(650) 572-5882

AGREED:

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David Gurlé   Date
Executive Vice President
Reuters Collaboration Services